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Committee on Relations with the Host Country

Letter dated 15 October 2001 from the Permanent Representative of Cuba to the United Nations addressed to the Chairman of the Committee on Relations with the Host Country

I have the honour to address you, in your capacity as Chairman of the Committee on Relations with the Host Country, regarding note verbale No. 422 and attachment dated 15 October 2001, enclosed herewith (see annex), sent by the Permanent Mission of Cuba to the United Nations to the United States Mission to the United Nations, with reference to the violation of the diplomatic privileges and immunities and the disruption of the normal and full functioning of the Permanent Mission of Cuba to the United Nations caused by the restraining notice against the bank accounts of the Permanent Mission of Cuba at the Chase Manhattan Bank in New York, issued in *Martínez v. Republic of Cuba*, index No. 111427-01.

The Permanent Mission of Cuba to the United Nations postponed this communication in the light of the tragic events of 11 September 2001, on the one hand, as an expression of sympathy, and on the other hand, to give the distinguished United States Mission to the United Nations time enough to focus on this issue, and to wait for its reply to the Cuban Mission's notes verbales No. 337 of 9 August 2001 (A/AC.154/341, annex) and No. 347 of 17 August 2001 (A/AC.154/343, annex).

The Cuban Mission to the United Nations would like to point out that the restraining notice is still in force, and strongly protests against these illegal actions in violation of its diplomatic immunities and privileges, and demands that the host country authorities, in compliance with their legal obligations, immediately re-establish the conditions for a full and normal functioning of the Cuban Permanent Mission, taking all measures necessary to do so.

The Permanent Mission of Cuba requests that a meeting of the Committee on Relations with the Host Country be convened as soon as possible to deal with these serious matters, in order to consider the failure of the United States Government to fulfil its obligations relating to the Cuban Mission's privileges and immunities.

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I kindly request that both this letter and its annexes be circulated as an official document of the Committee on Relations with the Host Country.

(*Signed*) Bruno **Rodríguez Parrilla**
Ambassador
Permanent Representative

Annex to the letter dated 15 October 2001 from the Permanent Representative of Cuba to the United Nations addressed to the Chairman of the Committee on Relations with the Host Country

The Permanent Mission of the Republic of Cuba to the United Nations presents its compliments to the United States Mission to the United Nations and has the honour to refer to the restraining notice against the bank accounts of the Permanent Mission of Cuba served at the Chase Manhattan Bank issued in *Martínez v. Republic of Cuba*, index No. 111427-01.

The law firm of Rabinowitz, Boudin, Standard, Krinsky and Lieberman, P.C., representing the Permanent Mission of the Republic of Cuba to the United Nations, once again contacted the United States Attorney's Office in New York at approximately 5.15 p.m. on 10 October 2001, to enquire with regard to any further information concerning the withdrawal of the restraining notice in the above-referenced action on the Mission's accounts. In that case, the law firm was briefed once again by Ms. Wendy H. Schwartz. At that time, Ms. Schwartz reiterated what she had said on 27 August 2001, that there were no new developments with regard to the restraining notice. Plaintiff's counsel had neither seemingly contacted her office, nor had the United States Attorney's Office taken any action with regard to the restraining notice. Therefore, the restraining notice is still in force.

The law firm of Rabinowitz, Boudin, Standard, Krinsky and Lieberman, P.C., representing the Permanent Mission of Cuba to the United Nations, also asked the United States Attorney's Office in New York on 10 October 2001 if that office intended to take any further action in case they did not hear from the Plaintiff's counsel. Ms. Schwartz responded that they were not going to take any further action, and explained that unless the Plaintiff's counsel voluntarily wanted to do this, her office was not in a position to demand anything from Plaintiff's counsel or to set deadlines regarding the withdrawal of the restraining notice.

The Permanent Mission of the Republic of Cuba to the United Nations has the honour to attach herewith a memorandum containing its considerations regarding the current status of the restraining notice and its legal effects, after having taken appropriate legal advice from the law firm representing its interests in the United States (see appendix).

The Permanent Mission of Cuba takes note of inaccurate information given by the United States Mission at the Committee on Relations with the Host Country during the consideration of this issue on 17 August 2001. The Permanent Mission of Cuba strongly protests to the authorities of the host country for its failure to fulfil its legal obligations relating to the immediate re-establishment of appropriate conditions for the full and normal functioning of the Mission, as well as for the full exercise of its diplomatic privileges and immunities.

The Permanent Mission of Cuba to the United Nations avails itself of this opportunity to renew to the United States Mission to the United Nations the assurances of its consideration.

New York, 15 October 2001

Appendix

Martínez v. Republic of Cuba

In *Martínez v. Republic of Cuba*, a judgement was issued by a Florida court against the Republic of Cuba for a substantial sum of money. The Cuban Mission to the United Nations had no involvement in the events giving rise to the lawsuit. However, in an effort to collect upon the judgement, the attorney for plaintiff served a restraining notice on 27 June 2001 on Chase Manhattan Bank in New York, expressly naming the account of the Cuban Mission to the United Nations. The United States Government has acknowledged that these diplomatic accounts are immune from legal process and requested, by letter dated 15 August 2001, that the plaintiff's attorney withdraw the restraining notice with respect to these accounts. Even though the plaintiff's attorney has failed to honour this request, the United States has taken no other action. It has full authority to request a United States court to vacate the restraining notice but has not sought this relief from the courts.

Issuance of this restraining notice is an exercise of United States jurisdiction and authority over the property of a diplomatic mission, contrary to fundamental international law. It is not a private act which the United States Government can choose to ignore.

A restraining notice is a form of legal process which has the same effect as a court-issued injunction. When a judgement creditor's attorney issues a restraining notice, he forbids, with the full force of the law, the transfer or use of the specified property until the underlying judgement it seeks to enforce is satisfied. Like an injunction, a restraining notice acts as a freeze over assets, during which time a judgement creditor can use other devices like writs of execution to have the assets turned over to her.

In issuing a restraining notice, an attorney acts as an "officer of the court", not as a private party. *Save Way Oil Co. v. 284 E. Parkway Corp.*, 115 Misc.2d 141, 143, 453 N.Y.S.2d 554 (Civ. Ct. Kings. Co. 1982). Indeed, courts acknowledge that an attorney's role is like "a judge or other adjudicatory official". Idem, p. 145

Most strikingly, revealing the true official nature of a restraining notice, a violation thereof will result in *contempt of court*. N.Y. C.P.L.R. § 5251 ("Refusal or wilful neglect of any person to obey a ... restraining notice issued, or order granted ... shall be punishable as a contempt of court."); *McDonnell v. Frawley*, 23 A.D.2d 729, 257 N.Y.S.2d 689 (1st Dept. 1965) (debtor wilfully violating restraining notice can be held in contempt). In fact, the attorney is required by law to include in the restraining notice itself an explicit warning of punishment by contempt of court. N.Y. C.P.L.R. § 5222(a).

Thus, it is clear that the restraining notice represents the exercise of civil jurisdiction over and the service of legal process upon diplomatic property. However, the Cuban Mission to the United Nations enjoys full privileges and immunities from such jurisdiction and process under the Vienna Convention on Diplomatic Relations of 1961, made applicable by Article 105, paragraph 2, of the Charter of the United Nations, article V, section 15, of the United Nations Headquarters Agreement, and article IV, section 11, of the Convention on the Privileges and Immunities of the United Nations. The United States courts have acknowledged in a number of cases — *Sales v. Republic of Uganda*, 1993 WL

437762 (S.D.N.Y. 1993) (quashing restraining notices on United Nations Mission property); *Foxworth v. Permanent Mission of Republic of Uganda to United Nations*, 796 F. Supp. 761 (S.D.N.Y. 1992) (vacating writ of execution on United Nations Mission accounts); *Liberian Eastern Timber Corp. v. Government of Republic of Liberia*, 659 F. Supp. 606 (D.D.C. 1987) (vacating writ of attachment on United Nations Mission accounts) — that, pursuant to these Conventions, the funds of a Mission are immune from *all forms of legal process*, including restraining notices.

In addition, the Vienna Convention on Diplomatic Relations provides in article 25 that "the receiving State shall accord full facilities for the performance of the functions of the mission". Vienna Convention, Apr. 18, 1961, 23 U.S.T. 3227, 3238.

"Full facilities" requires the ability to operate bank accounts in a normal fashion, free from any disruption from the service of legal process. *Liberian Eastern Timber Corp.*, 659 F. Supp. p. 608 (finding that an embassy lacks "full facilities", the Government of the United States agreed to accord, if to satisfy a civil judgement, that the Court permits a writ of attachment to seize official bank accounts used or intended to be used for purposes of the diplomatic mission). Here, the Cuban Mission is being denied its "full facilities" by the restraining notice, regardless of whether Chase Manhattan Bank continues to operate the Mission's accounts at the moment. A diplomatic mission cannot operate normally on the assumption that a bank will disregard or continue to disregard a mandatory legal process such as a restraining notice.

Accordingly, the United States Government, as the host country, is required by international law to take immediate action to vacate the restraining notice on the Cuban Mission accounts.